

CHAPTER I

PRE-INSPECTION PROCEDURES

A. General Responsibilities and Administrative Procedures.

If any policy, procedure or other instruction covered in this *VOSH Field Operations Manual* (FOM) is found to be in conflict with the *VOSH Administrative Regulations Manual* (ARM), the ARM shall take precedence.

The following positions within the Department of Labor and Industry (DOLI) have designated authority and responsibility for ensuring compliance with the Virginia State Plan for the enforcement of occupational safety and health in accordance with the Federal Occupational Safety and Health Act of 1970 (P. L. 91-596) and Title 40.1 of the *Code of Virginia*. The *VOSH Administrative Regulations Manual* contains detailed information on the rules, regulations and procedures under which the Department carries out this mandate. This document empowers DOLI personnel to make decisions as situations warrant with the ability to act efficiently to enforce the Occupational Safety and Health Act. Employees should refer to their employee work profile for individual job responsibilities. Employee work profiles may be obtained through the employee's supervisor or from the Office of Human Resources.

1. **Director of VOSH Programs.** It is the duty or mission of the Director of VOSH Programs to implement and direct overall operational policies and procedures, to develop goals, objectives, and establish performance standards for all VOSH field operations, and to monitor VOSH program activity and performance. The Director also provides direct oversight of safety compliance activities and overall direction and guidance regarding all program and technical matters relating to safety to the Regional Director and Compliance Manager. The VOSH Director reports to the Commissioner.
2. **Director of Occupational Health Compliance Program.** It is the duty or mission of the Director of Occupational Health Compliance to implement and direct operational policies and procedures for health compliance activities, to develop goals, objectives, and establish performance standards for VOSH field operations, and to monitor program activity and performance. The Director also provides overall direction and guidance regarding all program and technical matters relating to health to the Regional Director and Compliance Manager. The Director of Occupational Health Compliance reports to the Director of VOSH Programs.

- A. 3. Regional Directors.** It is the duty or mission of the Regional Directors to implement VOSH's field programs within the delegated area of responsibility of the Regional Office and within the VOSH policy parameters established by the Safety and Health Compliance Directors.
- 4. Compliance Managers.** It is the duty or mission of the Compliance Managers or their designees to have first level supervisory responsibility over the CSHOs in the discharge of their duties and to review their cases. They may also conduct compliance inspections. Compliance Managers ensure technical and programmatic adequacy in applying the policies and procedures in effect in the Department for the compliance programs. They also have responsibility for implementation of a quality assurance system suitable to their individual work group. Compliance Managers are supervised by and report directly to the Regional Director but also receive direct guidance and support from the Program Director on all technical, programmatic and non-administrative issues.
- 5. Compliance Safety and Health Officer.**
- a. General.** The primary responsibility of the Compliance Safety and Health Officer (CSHO) is to carry out the mandate of the Commissioner and the Department of Labor and Industry "to assure so far as possible every working man and woman in the Commonwealth have safe and healthful working conditions...." To accomplish this mandate the VOSH program uses a wide variety of programs and initiatives, one of which is enforcement of standards through effective inspections to determine whether employers, under § 40.1-51.1.A., *Code of Virginia*, are:
- (1)** Furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees, and
 - (2)** Complying with safety and health laws, standards and regulations promulgated under the law.

Through inspections and other employee/employer contact, the CSHO can help ensure that hazards are identified and abated to protect workers. During these processes, the CSHO must use professional judgment to adequately document hazards in the case file as required by the policies and procedures in effect for VOSH. The CSHO will be responsible for the technical adequacy of each case file. Individual inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

A.5.

b. Subpoena Served on CSHO or other VOSH Personnel

- (1) General.** Subpoenas, which require appearance in court, are occasionally received by CSHOs. Failure to comply with subpoenas may result in contempt of court. However, requests to appear which are outside the normal course of the CSHO's work may be appropriately voided so that CSHO does not have to appear. (See Section (2)(d) below).
- (2) Receipt of Subpoenas.** No employee shall accept service of process or a subpoena for any other employee, except as specified below:

 - (a)** Subpoenas addressed to the Commissioner or the Department may only be accepted by the Commissioner's private secretary. The Assistant Attorney General shall be immediately notified by the Commissioner's private secretary about the subpoena;
 - (b)** Subpoenas addressed to any other employee which initiates a lawsuit against the individual in his capacity as an employee of the Department may only be accepted by the employee named on the subpoena;
 - (c)** All other subpoenas concerning VOSH business for the appearance as a witness or for production of documents may only be accepted by the employee named on the subpoena, the employee's immediate supervisor, or a supervisor higher in the employee's chain of command;
 - (d)** The employee receiving a subpoena shall immediately notify the Office of Legal Support about the proper course of action.

- c. Subpoena Procedures.** If the subpoena concerns a VOSH case in which the CSHO was involved and in which the Department is a party, it must be complied with after contact with the Office of Legal Support. The Department shall attempt to quash (void) all other subpoenas dealing with cases in which VOSH is not a party. Early contact with the Office of Legal Support is essential to ensure that the subpoena can be avoided so the VOSH employee does not have to testify.

A.5.

- d. Testifying in Court.** CSHOs may be called upon to testify in a variety of situations. They may have to testify in a court proceeding in defense of a citation that they issued. The CSHO shall be mindful of this fact when recording observations during inspections. The case file shall reflect conditions observed in the workplace as accurately as possible. If the CSHO is called upon to testify, the case file will be invaluable as a means of recalling actual conditions. This type of testimony is a logical extension of the compliance process, and is necessary.

However, CSHOs may also be called upon to testify in what are known as “third party” cases. These will involve situations in which the CSHO performed an inspection or investigation, and attorneys for either the employee or another entity such as the manufacturer or general contractor want the CSHO to testify regarding the citation. CSHOs may also be asked by attorneys for either side to spend time explaining the case, or what their testimony will be.

It is the policy of the Department that unnecessary involvement in third-party cases is not an effective use of employee resources, and unnecessarily takes CSHOs away from their primary duties. Further, the Office of Legal Support will seek to limit CSHO involvement in third party litigation.

Therefore, CSHOs are directed to only participate in third party cases to the extent required by a subpoena for either a “Notice of Oral Examination” (deposition), or for testimony in a court trial.

Type of testimony given. If a CSHO has been subpoenaed to testify as described above, an issue often arises as to what type of testimony will be given. There are two types of testimony: “expert testimony” and “factual testimony.” Expert testimony involves giving one’s opinion as to certain issues. For example, expert testimony could involve stating that you believe a certain practice to be unsafe. Factual testimony, on the other hand, is limited to explaining facts without embellishing these facts with any opinions. For example, a CSHO could explain that certain documents appear to be accurate photocopies of their work notes or the Citation and Notice issued following their inspection. Other examples of factual testimony would include stating “yes, these are the photographs that I took” or “yes, I recommended citing a violation of *(standard number)*.”

CSHOs shall provide only factual testimony, not expert testimony, in cases where the Department is not a party to the action. Neither side in a lawsuit should be provided free expert testimony by the State. Again, this

is not an efficient use of state resources. The Office of Legal Support will coordinate with the Office of the Attorney General, as the circumstances dictate.

- A.5. e. Disposition of Inspection Records.** “Inspection Records” are any records made by a CSHO that concern, relate to, or are part of any inspection or that concern, relate to, or are part of the performance of any official duty. Such original material and all copies shall be included in the case file. These records are the property of the Commonwealth and a part of the case file. Inspection records are not the property of the CSHO and are not to be retained or used for any private purpose under any circumstances. All photographic negatives pertinent to the case shall remain with the case file.

EXCEPTION: Copies of photos which are not needed for the case file may be given to and used by staff for use during safety and health training sessions.

- f. Release of Inspection Information.** The information obtained during inspections is confidential, but is to be determined as disclosable or non-disclosable on the basis of criteria established in the Virginia Freedom of Information Act (FOIA).
- g. Freedom of Information Request.** All Freedom of Information Act (FOIA) requests concerning case files or program statistics are to be processed by the Office of Legal Support. With the exception of media requests, all such requests should be referred to the Director of the Office of Legal Support, in accordance with Agency Policy Statement No. 4-89, or its most current version.
- h. Seizure of Evidence.**
- (1) General.** Occasionally, VOSH will seek to obtain, or otherwise preserve evidence during an investigation. Exhibits range from documentary evidence such as drawings or pictures taken by the employer to physical evidence such as extension cords or compressors. Our need for such items ranges from testing to preservation of the items for trial. The following procedures will govern our handling of such items.

- A.5.h.**
- (2) Documentary Evidence.** Documentary evidence will be kept by VOSH until the case file is closed. If the employer makes a written request for return of the evidence, VOSH will return the evidence after making a copy for the file.
 - (3) Physical Evidence.** Physical evidence will be kept by VOSH while the case is open. When the case is closed, VOSH shall return the item and obtain a written receipt from the individual receiving the item. The receipt shall contain the following minimum information: (1) a description of the item returned, (2) the signature of the person receiving the item, (3) the date, (4) the signature of the VOSH employee returning the item, and (5) the inspection name and inspection number.

 - (a)** If the employer requests the return of the physical evidence before the case file is closed, the Regional Director may authorize the return of the item if it is not important to the case. The Office of Legal Support may be consulted, if necessary.
 - (b)** If an employer refuses to provide or give access to items needed as physical evidence, the CSHO shall follow the refusal of entry procedures.
 - (c) Testing of Physical Evidence.** When some pieces of physical evidence require testing, the Compliance Manager shall contact the appropriate Program Director who, in consultation with the Director of the Office of Legal Support, shall select the appropriate testing facility to assure proper testing procedures and chain of custody.

B. Inspection Scheduling

- 1. Program Planning.** The primary consideration in conducting compliance operations is the attainment of maximum effective inspection coverage. To achieve this goal, the guidelines in this chapter shall be used for scheduling compliance operations. Effective and efficient use of resources requires careful, flexible planning. This section provides general guidelines to the Directors of Occupational Health and Safety Compliance and the Regional Directors in planning compliance operations and related activities and instructions for their implementation. In this way, the overall goal of hazard abatement and worker protection are best served. The Compliance Manager is responsible for overseeing, scheduling, and assigning the work of the CSHOs who report to them.

B. 2. Inspection/Investigation Types.

- a. Unprogrammed.** Inspections scheduled in response to alleged hazardous working conditions that have been identified at a specific worksite are unprogrammed. This type of inspection responds to imminent dangers, accidents, fatalities/catastrophes (where alleged hazardous working conditions have been identified), complaints and referrals. All public sector unprogrammed inspections are processed and conducted in the same manner as for the private sector.

NOTE: This category includes all employers directly affected by the subject of the unprogrammed activity and is especially applicable on multi-employer worksites.

- b. Unprogrammed Related.** Inspections of employers at multi-employer worksites whose operations are not directly affected by the subject of the conditions identified in the complaint, accident or referral are unprogrammed related. An example would be a trenching inspection conducted at the unprogrammed worksite, where the trenching hazard was not identified in the complaint, accident report or referral.

- c. Programmed.** Programmed inspections are inspections of worksites which have been scheduled based upon objective or neutral selection criteria. The worksites are selected according to the General Schedule for safety and health in General Industry; the Construction Schedule for safety in the Construction Industry; or national or local emphasis programs.

Follow-ups and monitoring shall also be classified as programmed inspections. (See order of priorities for compliance inspections.)

- d. Programmed Related.** Inspections of employers on multi-employer worksites whose activities have not been included in the programmed assignment; e.g., a low injury rate employer at a worksite at which programmed inspections are being conducted for all high injury rate employers.

3. Inspection Priorities.

- a. Order of Priority.** Generally, priority of accomplishment and assignment of compliance resources for inspection categories shall be as follows:

<i>Priority</i>	<i>Category</i>
First	Imminent Danger (as defined in the ARM)
Second	Fatality/Catastrophe Inspections (regardless of whether our inspection is in response to specific evidence of hazardous conditions or not)
Third	Complaints/Referrals Inspections
Fourth	Accident/First Report of Accident Inspections
Fifth	Programmed Inspections (General Schedule, Construction Schedule, National and Local Emphasis Programs, Follow-up/Monitoring)

- B.3. b. Efficient Use of Resources.** Based on the nature of the alleged hazard, unprogrammed inspections will normally be scheduled and conducted prior to programmed inspections. Deviations from this priority list are allowed as long as they are justifiable, lead to efficient use of resources, *and* contribute to the effective protection of workers.

An example of such a deviation would be for the Compliance Manager to commit a certain percentage of IH resources to programmed Local Emphasis Program (LEP) inspections if no complaint backlog exists.

Programmed inspections may occasionally receive a higher priority than that which should normally be scheduled when the response time for unprogrammed inspections so permits. For example, a programmed inspection may be conducted during the response period for a formal other-than-serious complaint.

- c. Follow-up Inspections.** In cases where follow-up inspections are necessary, they shall be conducted according to the procedure in Chapter IIB, A.1 of the VOSH FOM. When available, the CSHO who performed the initial inspection should be assigned to perform the follow-up inspection. Except in unusual circumstances, follow-up inspections shall take priority over all programmed inspections and any unprogrammed inspections with hazards evaluated as other than serious. Normally, follow-up inspections should not be conducted within the 15 working day contest period. See Chapter IV, A.4. regarding the effect of an appeal upon abatement period.

B. 4. Inspection Selection Criteria.

a. General Requirements. VOSH's priority system for conducting inspections is designed to distribute available VOSH resources as effectively as possible to ensure that maximum feasible protection is provided to the working people of the Commonwealth of Virginia.

(1) Scheduling. Directors of Occupational Safety and Health Compliance and Compliance Managers shall ensure that inspections are scheduled within the framework of this chapter and scheduling directives in the VOSH Program Directives Manual. Appropriate documentation of scheduling practices is to be maintained. *Also refer to VOSH Program Directive 02-003A, or its successor, for exemptions and limitations on inspections and/or funding and section E.2.d. of this Chapter for coordination with VOSH Consultation.*

(2) Effective Use of Resources. The Compliance Manager shall ensure that VOSH resources are effectively distributed during inspection activities. If an inspection is of a complex nature, the Compliance Manager may consider utilizing resources from outside VOSH according to the procedure in Chapter IIB, D.8.b. of the VOSH FOM, Use of Expert Assistance. The Regional Office will retain control of the inspection.

(3) Effect of Contest. If an employer scheduled for inspection, either programmed or unprogrammed, has contested a citation and/or a penalty received as a result of a previous inspection and the case is still pending, the following guidelines apply:

(a) Penalty Only. If the employer has contested the penalty only, the inspection shall be scheduled as though there were no contest.

(b) Citation Itself. If the employer has contested the citation itself or any items thereon, then the following apply:

1 Unprogrammed inspections. Inspections conducted in response to alleged hazardous conditions at a worksite are considered unprogrammed inspections. Unprogrammed inspections shall be scheduled in accordance with the guidelines in section B.3.a. of this chapter. The

scope of such an inspection normally shall be partial. All areas related to items under contest shall be excluded from the inspection unless a potential imminent danger is involved.

B.4.a.(3)(b)

2 Programmed inspections. Programmed inspections may be carried over to the next register in accordance with the guidelines in Program Directive 02-051B, or its successor. Such inspections may continue to be carried over until the case is no longer before the courts. If the inspection is done, all items under contest shall be excluded from inspection unless a potential imminent danger is involved.

3 Programmed Inspections vs. Issued Citations. On rare occasions, when warranted by the particular circumstances involved, programmed safety inspections may be carried over to the next register when the employer has contested a previously issued health citation. The same is true for programmed health inspections when the employer has contested a previously issued safety citation. The decision to carry such an inspection over shall be made by the Compliance Manager.

b. Employer Contacts. Contacts for information initiated by employers or their representatives shall not trigger an inspection, nor shall such employer inquiries protect them against regular inspections conducted pursuant to guidelines established by the agency. Moreover, if an employer or its representative indicates that an imminent danger exists or that a fatality or catastrophe has occurred, the Compliance Manager shall act in accordance with established inspection priority procedures.

C. Complaints and Other Unprogrammed Inspections.

1. General. The procedures in this section apply to complaints or referrals received and processed at the Regional Office before an inspection is initiated rather than to complaints received by the CSHO during an inspection. Complaints and referrals shall be evaluated by the Compliance Manager according to the criteria established in Chapter III, B.2., Types of Violations, for classifying the alleged violations.

The program's response to a complaint will take a variety of forms, ranging from an inspection to a response by letter, depending upon the complaint, the nature of the hazard and the abatement response of the employer. Complaints or referrals meeting the criteria in section C.8. (i.e., imminent danger, serious hazards alleged, etc.) shall be scheduled for inspection. Complaints or referrals which do not meet the criteria in section C.8. shall be investigated by telephone and fax contact with the employer as per section C.9.

NOTE: VOSH no longer classifies complaints as formal or non-formal.

When essential information is not provided by the complainant or the complaint is too vague to evaluate, an attempt shall be made to clarify or supplement available information. (See Chapter IV, B.5.b. for procedures to follow when information is received alleging a violation which last occurred six months or more prior to the complaint.)

NOTE: If a complaint is received about a worksite, and the employer is on a target list, a comprehensive inspection should be performed whenever possible. When the scope of a complaint inspection is converted to comprehensive, the CSHO should inform the employer that they are targeted for an inspection, and that there is also a complaint.

C. 2. Definitions.

a. Complaint (VOSH-7). Notice of an alleged hazard (over which VOSH has jurisdiction), or a violation, alleged by a past or present employee (as defined in (1) below), a representative of employees (as defined in (2) below), a VOSH officer seeking resolution of a discrimination complaint or any other individual knowledgeable of the alleged hazardous condition.

(1) Employee. For purposes of submitting a complaint, an "employee" is either of the following:

(a) A present employee of the employer about whose establishment the complaint is being made; or

(b) A present employee of another employer if that employee is working at or near some other employer's workplace and is exposed to hazards of that workplace.

(2) Representative of Employees. For purposes of submitting a complaint, a representative of employees is any of the following: unit, such as a certified or recognized labor organization;

- (a) An authorized representative of the employee bargaining
- (b) Any member of the employee's immediate family acting on behalf of the employee;
- (c) A lawyer or physician retained by the employee.

NOTE: If the CSHO obtains information that the complaint was not submitted with the knowledge of or on behalf of the employee, he shall bring this to the attention of the Compliance Manager.

- C.2.**
- b. Referral (VOSH-90).** Notice of an alleged hazard or violation given by any source not listed in "Complaints" above, including CSHO referrals and media reports. See section C.1. of this Chapter for procedures to be followed for referrals.
 - c. Permanently Disabling Injuries or Illnesses.** Injuries or illnesses which may result in permanent disabilities or illnesses that are chronic or irreversible are examples of permanently disabling injuries or illnesses. These include: amputation, blindness, standard threshold shift in hearing, lead or mercury poisoning, or third-degree burns.
 - d. Complaint Inspection.** A complaint inspection is an inspection that is initiated primarily as a result of a complaint that is conducted by a VOSH compliance officer at the employer's worksite, and that meets at least one of the criteria listed below:
 - (1)** The complaint was reduced to writing, is signed by a current employee or employee representative, and states the reason for the inspection request with reasonable particularity. In addition, there are reasonable grounds to believe that a violation of a safety or health standard has occurred.
 - (2)** The complaint alleges that physical harm, such as a disabling injury or illnesses (as defined above) has occurred as a result of the complained-of-hazard(s) and there is reason to believe that the hazard or related hazards still exist.
 - (3)** The complaint is based on an allegation of an imminent danger situation (Refer to section C.7. for specific procedures to be followed in the case of an imminent danger situation).

C.2.d.

- (4)** The complaint identifies an establishment or an alleged hazard covered by a local or national emphasis program.
- (5)** The employer fails to provide an adequate response to a complaint as described below, or the complainant provides evidence that the employer's response is false or does not adequately address the hazard(s).
- (6)** The firm or establishment that is the subject of the complaint has a history of egregious, willful, or failure-to-abate citations, within the jurisdiction and within the last three (3) years.

The Compliance Manager may decide not to inspect a facility when good quality abatement evidence has been provided and when programs have been implemented to prevent a recurrence of hazards.

- (7)** A VOSH discrimination investigator requests that a complaint inspection be conducted in response to an employee's allegation that he/she was discriminated against for complaining about safety or health conditions in the workplace or for refusing to do an allegedly imminently dangerous job/task.
- (8)** If an inspection is scheduled or has begun at an establishment and a complaint that would normally be investigated by telephone/fax is received, that complaint may, at the Compliance Manager's discretion, be scheduled for inspection as a companion complaint.

- e. Complaint Investigation.** A complaint investigation is conducted for complaints that do not meet one of the above complaint inspection criteria, e.g., phone, telefax, e-mail or any other UNSIGNED complaint.

An "investigation" differs from an "inspection" in that an investigation does not include an on-site inspection of the workplace. VOSH advises the employer of the alleged hazards by telephone, telefax, email (***keep a hard copy of complaint and response***), or by letter if necessary. The employer is required to provide a written response. VOSH shall provide the results of the investigation to the complainant.

- 3. Identity of Complainant.** The identity of the complainants will be kept confidential, pursuant to § 40.1-51.2(b) of the *Code of Virginia*. No information shall be given to employers which would allow them to identify the complainant. This shall require typing and/or rewording of complaints. In addition,

correspondence must not be sent to the complainant's work address unless permission has been given by the complainant to use the work address.

- C. 4. Response Time to Signed Complaints.** Signed written complaints received from current employees or employee representatives, as defined in the *Administrative Regulations Manual* and the FOM, shall be evaluated promptly to determine whether an inspection or investigation will be conducted. If a decision is made to inspect, the inspection shall take place as soon as possible, but no later than within five (5) working days for serious complaints. If a signed written complaint was received from a current employee or employee representative and a decision is made not to inspect, a letter shall be sent to the complainant advising of the decision and its reasons. This letter shall include an explanation of the employee's appeal rights.

*NOTE: VOSH's goal is a rapid response to complaints, and rapid abatement of any hazards. These are the **maximum** time frames allowed for complaint response. ALL complaints which meet the definition in C.2.a. require a letter to be sent to the complainant. (Refer to section C.10.)*

- 5. Information Needed for Complaint Evaluation.** The Compliance Manager may use the following questions as a guideline in determining whether additional information is needed in order to evaluate the complaint.

a. For All Complaints Including Phone or Fax Complaints.

- (1)** What is the exact nature of the alleged hazard? What is the basis of the complainant's knowledge? How are workers exposed to this hazard? Describe the unsafe or unhealthy conditions; identify the location.
- (2)** What work is done in the unsafe/unhealthy area? Identify, as well as possible, the type and condition of equipment in use, the materials (i.e., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?
- (3)** With what frequency are workers doing the task which leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed as far as can be determined? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and if so, who took these actions? What were the results?

C.5.a.

- (4)** How many shifts are there? What time do they start? On which shift does the hazardous condition exist?
- (5)** What personal protective equipment (i.e., hearing protection or respirators) is required by the company relevant to the alleged exposure? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.
- (6)** How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?
- (7)** Determine if the complainant is a current employee or an employee representative.
- (8)** Is there an employee representative (union or safety committee) in the establishment? Include the name, address, and telephone number of the union and/or of the employee representative(s).
- (9)** Explain the complaint process and if appropriate, the concepts of "investigation" and "inspection," as well as the relative advantages of each.
- (10)** Inform the complainant(s) of their rights to confidentiality in accordance with § 40.1-49.8 of the *Code of Virginia*, and ask whether they wish to exercise that right.
- (11)** Explain employee rights regarding occupational safety and health discrimination, discharge or retaliation, as set out in § 110 of the VOSH ARM.

b. For Health Hazards.

- (1)** Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. What were the results?
- (2)** What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or is there any acoustical insulation in the area which may reduce exposure to the hazard?

- C.5.b.**
- (3)** What administrative or work practice controls has the employer put into effect?
 - (4)** Do any employees have any symptoms which may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work-related disease or condition? What was it?
 - (5)** Are respirators worn to protect against health hazards, and if so, what kinds? What exposures are they protecting against?
 - (6)** If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

c. For Safety Hazards.

- (1)** Under what adverse or hazardous conditions are employees required to work? (This should include conditions contributing to stress and “other” probability factors.)
- (2)** Have any employees been injured as a result of this hazardous condition?
- (3)** Have there been any “near-miss” incidents?

6. Both Safety and Health Hazards Alleged. When a complaint alleges both safety and health hazards, the evaluation by the Compliance Manager shall address any unusual circumstances in the handling of the complaint.

7. Responding to Complaints Alleging Imminent Danger Conditions. Any allegation of “imminent danger,” as defined in the ARM received by a Department office, shall be handled in accordance with the following procedures:

- a.** The Compliance Manager shall immediately determine whether there is a reasonable basis for the allegation.
- b.** If there is a reasonable basis for the allegation, imminent danger inspections shall be scheduled with the highest priority and the procedures in Chapter IIB, section F. are to be used.
- c.** The Compliance Manager or CSHO shall contact the employer immediately (and when known, the employee representative), obtain as many pertinent details as possible concerning the situation and attempt to have any employees affected by imminent danger voluntarily removed. Such notification shall be considered advance notice and shall be handled in accordance with the procedures given in section E.6. of this chapter.

- C. 8. Complaint Inspections.** Under certain circumstances such as those described below, an *on-site inspection* shall be performed. When an *inspection* is performed, the general or special inspection procedures in Chapters II and III shall be followed as appropriate based on the nature of the complaint.

a. Basis for an Inspection:

- (1) Allegations of imminent danger situations;
- (2) Allegations of serious hazards which in the judgment of the Compliance Manager require an on-site inspection. The Compliance Manager shall give appropriate consideration to the wishes of the complainant.
- (3) Permanently disabling injuries or illnesses, related to hazards apparently still in existence, have occurred.
- (4) Significant history of non-compliance.
- (5) Referral by Discrimination Investigator.
- (6) Employer response to a complaint investigation (described in section 9, below) is determined by VOSH to be inadequate, or disputed by a complainant.

b. Procedures for an Inspection.

- (1) The Compliance Manager shall evaluate each complaint and other available information, and exercise professional judgment to decide whether or not there are reasonable grounds to believe that a violation or hazard exists. If there are not reasonable grounds to believe that a violation or hazards exist, an inspection shall not be conducted. The Compliance Manager may also decide not to inspect a facility if there is evidence that the condition complained of is being abated.
- (2) If the complaint meets at least one of the inspection criteria listed in “Complaint Inspections” above, the complainant or employee representative shall be informed that an inspection will be scheduled and that he/she will be advised of the results. After an inspection, the Regional Office shall send the complainant a letter addressing each complaint item with reference to the citation(s), if any, or a sufficiently detailed description of why the findings did not result in a violation.

C.8.b.

- (3)** If the employee or employee representative requests an on-site inspection, but has not submitted a signed complaint or one which meets any of the other inspection criteria, he/she shall be advised that VOSH will hold the complaint for five working days so that he/she can either come into the office and sign the complaint or mail/fax a signed complaint letter detailing the type and location of the alleged hazards to VOSH. If a signed complaint is not then received after five working days, or if the complainant does not initially request an on-site inspection, VOSH will proceed with the investigation process. VOSH will no longer be required to mail VOSH-7 complaint forms to the complainant for signature.
- (4)** When a written complaint signed by a current employee or employee representative is received, and there are reasonable grounds to believe that a violation or hazard exists, an inspection shall be conducted. The complainant may be contacted for clarification of issues raised in the complaint, as necessary. Where a written, signed complaint has been submitted, but, in the professional judgment of the Compliance Manager, there are no reasonable grounds to believe that a violation or danger exists, no inspection or investigation shall be made. In such situations, the complainant shall be notified in writing of VOSH's intent not to conduct an investigation or inspection, the reasoning behind such a determination, and the appeal rights provided under the ARM.

9. Complaint Investigations/Procedures. When complaints do not meet the above or similar criteria, the complaint shall be *investigated* by telephone and fax. The Compliance Manager shall use discretion, based on the nature of the alleged hazard, in assigning a deadline for the employer's response. The deadline should normally be five (5) working days and under no circumstances shall it exceed 30 calendar days. When VOSH receives an adequate response from the employer and the complainant does not dispute the response, an *on-site inspection* generally will not be conducted, and no citation shall be issued.

- a. Contact Employer by Telephone.** If the complaint requires an investigation, VOSH shall contact the employer by telephone and notify him/her of the complaint and its allegation(s). All employers shall be advised that they themselves must investigate and determine whether the complaint is valid. The employer shall be advised that a response is due within five (5) working days and that VOSH requests the posting/sharing of information with employees, employee representative and/or the safety

committee. Although the employer must respond within the above time frame, he/she may not be able to complete abatement action, but is encouraged to do so. See the letter to employers in the Appendix for what is required in their response.

- C.9** **b. Request a Contact Person for the Investigation.** VOSH shall ask for the name, and appropriate contact information, such as telephone number and e-mail of the contact person at the employer's worksite and may also request the name, address, telephone number, and e-mail of the union and/or employee representative, if any. The company fax number is also requested. The employer is advised of the information needed to answer the complaint. The employer is encouraged to respond by fax and/or e-mail.

In addition, DOCUMENTATION SHALL BE REQUIRED, such as invoices, sampling results, photos, videotape, etc., and provided by the employer as evidence of abatement, to ensure that the complaint hazard(s) has been eliminated.

- c. Send Notification Letter/Reduce Hazard Abatement Time.** The goal of this procedure is to reduce the time it takes to abate the hazard. The notification letter should be faxed to the employer as soon as possible after the telephone call, or mailed the same day if no fax is available. It is not necessary to use certified mail.
- d. Results of Inspection or Investigation to Complainant.** After an inspection or investigation, the complainant shall be sent a letter with the results of the inspection or investigation. The letter shall *address each item* in the complaint, and shall include a copy of any response from the employer, a copy of any citation and notice issued, or a sufficiently detailed description of the findings and why they did not result in a violation. This letter should normally be sent within 15 calendar days following the inspection or investigation, or within 15 calendar days of the issuance of any citation, whichever is later. Refer to the Appendix for letter format.

The complainant shall be advised of his/her rights to dispute the employer's response, and of the right to request an inspection if the alleged hazard persists. The complainant need not put his/her dispute with the employer's response in writing. Disputed issues may be clarified by telephone, and some discretion is allowed in situations where, in the professional judgement of the Compliance Manager, the complaint does not warrant an on-site inspection. In such situations, the complainant shall be notified of

VOSH's intent not to conduct an inspection, and the reasoning behind such a determination. If the employee disagreement takes the form of written complaint, refer to procedures above.

- C.9.**
- e. Informing Complainant of Citation Modification.** Except for cases involving changes of a penalty only, the complainant shall be informed of any subsequent modification of a citation due to an informal conference, a settlement agreement or a decision of a court together with the reasons for the modification. Refer to the Appendix for letter format.
 - f. Signed Complaint Is Received.** If a signed complaint is received after the complaint investigation process has begun (for example, the signed complaint is received on the 8th day), VOSH shall make a determination as to whether the alleged hazard is still likely to exist based on the employer's response and by contacting the complainant. The complainant shall be informed that the complaint investigation has begun and he/she still retains the right to request an on-site inspection if he/she disputes the results and believes the hazard still exists.
 - g. Adequate Employer Response.** When VOSH receives an adequate response from the employer and the complainant does not dispute or object to the response, an on-site inspection normally will not be conducted.
 - h. Inadequate or No Employer Response.** If no employer or an inadequate employer response is received after the allotted five (5) working days, an additional contact with the employer may be made before an inspection is scheduled. Ultimately, if the employer provides no response or an inadequate response or VOSH determines from other information that the condition is not being corrected, an inspection will be scheduled.
 - i. Duration of Case.** The complaint shall not be closed until VOSH is certain that the hazard has been eliminated or abated.
- 10. Sample Letters for Complaint Procedures.** The Appendix contains samples of notification letters to the employer and complainant and a complaint form letter to an employer closing the complaint.
- 11. Recording in IMIS.** Information about complaint inspections or investigations shall be recorded in IMIS following current instructions given in the IMIS manual.
- 12. Discrimination Complaints.** The complainant shall be advised of the protection against discrimination afforded by § 40.1-51.2:1 of the *Code of Virginia*. The complainant shall be informed of the procedure for filing a

complaint, and shall also be advised that discrimination complaints must be filed within thirty days of the alleged discrimination violation. The complainant shall be given the telephone number and address of the Discrimination Investigator.

- C.12.**
- a. Complaint Filed by Former Employee.** Safety and/or health complaints filed by former employees who allege that they were fired for exercising their rights under Title 40.1 of the *Code of Virginia* will be scheduled for an inspection if the criteria in section C.8., Complaint Inspections, above, are met. Such complaints shall be forwarded to the Discrimination Investigator.
 - b. Complaint Handled as a Referral.** In those instances where the Discrimination Investigator determines that the existence or nature of the alleged hazard is likely to be relevant to the resolution of the discrimination complaint, the complaint shall be sent to the Compliance Manager for a VOSH inspection to be handled as a referral.
 - c. No Inspection Necessary.** When the decision is that no inspection is necessary, the Compliance Manager shall assign the complaint for investigation in accordance with the procedures in section C.9., above.
 - d. Imminent Danger Alleged.** Any discrimination complaint alleging an imminent danger shall be handled in accordance with the instructions in Section C.7.
 - e. Additional Information.** Additional information on discrimination complaints can be found in § 110 of the VOSH ARM and in VOSH Program Directives 04-001A and 04-002 (or their successors).
- 13. Referrals.** Referrals will be handled in a manner similar to that of complaints. For purposes of this chapter, a referral is normally distinguished from a complaint by the source providing information on the alleged hazard. Referral inspections are unprogrammed inspections and, except for complaints received from discrimination personnel, shall be recorded in the Regional Office using the VOSH-90 Form.
- a. Sources.** Notices of hazards or alleged violations originated by the sources listed below shall be considered as referrals except as noted. All other notices of hazards shall be considered as complaints, including employee complaints transmitted to VOSH by federal OSHA. Complaints received by other government agencies and simply forwarded to VOSH for action are complaints since they do not originate with the agency or its employees.

- C.13.a.** **(1)** Referrals may originate from the following sources:
- (a)** CSHO referrals.
 - (b)** Safety and Health Agency referrals.
 - (c)** Discrimination complaint referrals.
 - (d)** Other Government agency referrals.
 - (e)** Media reports.
- b.** **Letter, Fax or Telephone Response.** Referrals not meeting the criteria for Complaint Inspections in section C.8. shall normally be handled by letter, fax or telephone. For those referrals handled by letter, complaint letters can be revised to fit the particular circumstances of the referral.
- c.** **Inspection Response.** Referrals meeting the criteria for Complaint Inspections in section C.8. (or similar criteria) will normally be handled by inspection. A letter transmitting the results of the inspection will be sent to any referring agency/department, if so requested. This letter should normally be sent within 15 calendar days following the inspection or investigation, or within 15 calendar days of the issuance of any citation, whichever is later.
- d.** **Procedures.** Each referral shall be evaluated as thoroughly as possible in accordance with the guidelines for evaluating complaints to determine whether there are reasonable grounds to believe that a safety or health hazard exists. If so, the hazard shall be classified and prioritized for inspection by the Compliance Manager.
- 14.** **Reports of Accidents.** Accidents involving significant injury, or any other accident *not involving a fatality or a catastrophe*, however reported, may be evaluated as a complaint or a referral, depending on the source of the report. If an inspection is performed, it shall be handled according to the directions given in Chapter IIA, *General Inspection Procedures*.

D. Programmed Inspections.

- 1.** **Comprehensive Inspection.** A programmed inspection generally is a comprehensive inspection of the worksite but may be limited as necessary in view of resource availability and other compliance priorities. (Low-hazard areas, such as office space, may be excluded from inspection without affecting the comprehensiveness of the inspection.)

- D.1.**
- a. General.** Certain considerations are fundamental to the implementation of VOSH's targeting system.
- (1) Policy - Private Sector.** It is VOSH policy that programmed private sector inspections should primarily come from "high hazard" sectors of employment.
- (a)** In the area of safety, the agency considers a "high hazard" industry to be one within a Standard Industrial Classification (SIC) code with a an excessive lost workday injury rate .
- (b)** In the area of health, the agency considers a "high hazard" SIC code to be one with a previous history of serious VOSH/OSHA health citations.
- (c)** Where site specific injury and/or illness data is available in the area of safety or health, the agency considers a high hazard work site to be one with an excessive lost workday injury and/or illness rate.
- (d)** For the purpose of scheduling programmed inspections, all construction is considered to be a category of high hazard employment.
- (e)** Other specific industries, such as logging and work around overhead high voltage lines, are also high hazard industries and are frequently scheduled for inspection as national or local emphasis programs.
- (f)** Fatality/catastrophe inspections where it cannot initially be determined whether hazardous working conditions exist, shall be classified as programmed inspections. (See order of priorities for compliance inspections.)
- b. Policy - Public Sector.** Public sector programmed safety and health inspections are scheduled using the following guidelines and procedures. The scheduling system is based upon a multi-step process. Public sector programmed safety and health inspections for IMIS purposes, are classified as "Local Emphasis Program."
- (1)** The annual field operations program plan projections which are made at the Division Office level control the initial amount of public sector programmed inspections selected.

D.1.b.

- (2) For public sector programmed inspections, four categories of employment will be considered. These include construction, manufacturing, non-manufacturing, and agriculture operations. Within the categories of manufacturing, non-manufacturing, and agriculture, Local Emphasis Programs are developed using the procedures contained in this Chapter.

NOTE: For more information on scheduling programmed inspections, see Program Directive 02-051B, or its successor.

c. Description. Both programmed safety inspections and programmed health inspections are scheduled based upon a multiple-step process.

- (1) The initial selection of a particular programmed inspection (e.g., high hazard general industry, construction, high hazard health) is made in accordance with the annual projections which are made by the Directors of Occupational Safety and Health Compliance.
- (2) Within a category, establishments are selected for inspection from the inspection list for that category and placed in an inspection register and inspection cycles established; or in the case of an inspection schedule established by a VOSH Program Directive (e.g., local emphasis programs), selection and assignment of worksites shall be made in accordance with procedures contained in the VOSH Directive.
- (3) Reserved.
- (4) Where no establishment list is provided by the Directors of Occupational Safety and Health Compliance (e.g., construction), the Compliance Manager shall coordinate with the Program Director on how to establish a list locally, if appropriate.
- (5) Within an inspection register, establishments shall be inspected in descending order of sequence number; however, establishments may be inspected out of sequence (i.e., moved up the list only) to promote efficient use of resources. All establishments in a cycle must be inspected, with only limited exceptions, before a new register is begun.

D. 2. Guidelines and Procedures. Establishments which appear on both the safety and health inspection registers shall be scheduled for a joint safety/health inspection whenever possible. Programmed inspections may also be conducted jointly by both safety and health personnel whenever resources are available and it is likely, based on experience in inspecting similar workplaces, that both safety and health hazards exist to a significant degree. If an inspection is begun as safety only or as health only but the CSHO determines during the course of the inspection that it should be expanded, the CSHO shall contact the Compliance Manager. A decision will then be made as to whether the inspection should be expanded and, if so, to what extent. The decision may also be, based on resource availability, to handle the information as a CSHO referral for inspection at a later time.

a. Inspection Scheduling for General Industry (Safety and Health). Programmed safety and health inspections of private and public sector establishments shall be selected and assigned in accordance with the appropriate VOSH Directive (e.g., VOSH Directive 02-051 *(or its successor)*, for private sector safety and health General Schedule inspections; VOSH Program Directive 09-004, or its successor, for private sector safety Construction Schedule inspections).

NOTE: Public Sector Program targeted inspections, targeted assistance visits, and on-site evaluations have a priority at least equal to that of private sector general industry programmed inspections.

(1) Establishment Lists. The Directors of Occupational Safety and Health Compliance will provide a series of establishment lists for use by VOSH in programming inspections. These lists may be provided electronically, when needed.

NOTE: Establishments showing ten or fewer employees (unless they are part of a larger employer) will be deleted from establishment lists provided by the Program Director.

(2) Adjustments to Establishment Lists. Prior to use of the establishment lists provided by the Directors of Occupational Safety and Health Compliance for scheduling purposes, the Compliance Manager shall make appropriate additions and deletions as administrative guidelines permit.

E. Inspection Preparation.

- 1. General.** A programmed inspection is generally a comprehensive inspection of the worksite, but may be limited as necessary in view of resource availability and other compliance priorities. The conduct of effective inspections requires professional judgment in the identification, evaluation and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case. (Low-hazard areas, such as office space, may be excluded from inspection without affecting the comprehensiveness of the inspection.)
- 2. Pre-Inspection Planning.** It is most important that the CSHO spend an adequate amount of time preparing for each inspection. Due to the wide variety of industries and associated hazards likely to be encountered, pre-inspection preparation is essential. The following are guidelines for such preparation.
 - a. Schedule Planning.** CSHOs shall plan individual schedules in advance in coordination with their Compliance Manager, reflecting the inspection priorities in B.3.a. of this chapter.
 - b. Background Review.** Due to the wide variety of industries and associated hazards likely to be encountered, to ensure the conduct of a quality inspection, the CSHO, together with the Compliance Manager, if appropriate, shall carefully review:
 - (1)** All pertinent information contained in the establishment file and appropriate reference sources to become knowledgeable in the potential hazards and industrial processes that may be encountered and shall identify the personal protective equipment necessary for protection against these anticipated hazards.
 - (2)** Appropriate standards and sampling methods. Based on experience and information on file concerning the establishment, select the instruments that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration.
 - c. Review of Previous Citations.** During review of previous inspection case files, CSHOs shall note those citations that were issued and their abatement status as documented in the case file, especially those deemed high gravity serious and willful.
 - d. Coordination with VOSH Consultant.** The CSHO shall determine whether an onsite consultation visit has recently been conducted or is in progress. If the employer has received a limited service onsite consultation

visit, or if an unprogrammed compliance inspection will be conducted, the CSHO shall determine whether the VOSH Consultant has established any abatement date(s) which has not yet expired for any serious hazard(s). The compliance inspection may not include any item covered by the VOSH Consultant's abatement plan.

NOTE: An employer who has received a comprehensive onsite consultation visit MAY BE EXEMPT from programmed inspections for the twelve month period following the consultation visit.

E.2.d.

- (1) Effect upon Scheduling.** An onsite consultation visit already in progress will have priority over VOSH Compliance inspections except for imminent danger, fatality/catastrophe, and formal complaints. An on-site consultative visit is considered "in progress" in relation to working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions. VOSH Compliance may assign a lower priority to workplaces where consultation visits are scheduled.

NOTE: Consultants will confer with the Compliance Manager to check the general schedule and mark "CS" next to the name of any employer that has a consultation visit scheduled within 2 weeks. Should the employer cancel the appointment, the consultant will mark through the initials on the general schedule. Only general schedule inspections should be deferred if consultation visits are scheduled. It is the responsibility of the consultant to confer with the Compliance Manager to check the general schedule listing.

- (2) Programmed Inspection Schedule.** When an employer requests participation in a recognition and exemption program, and undergoes a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that were identified within the established time frame; has begun to implement all elements of an effective safety and health program; and agrees to request a consultative visit if major changes in working conditions or work processes occur, VOSH's programmed inspections at a particular site may be deferred while the employer is working to achieve recognition and exemption status.

Newly certified SHARP worksites will be exempt from Programmed Inspections for 1 year. Recertified SHARP worksites will be exempt from Programmed Inspections for 2 years. The

Consultation Program Manager will notify Compliance Managers of SHARP worksites.

Virginia Voluntary Protection Program (VVPP) Star worksites are exempt from Programmed Inspections from the time the pre-evaluation on-site review is scheduled and as long as they maintain their VVPP status. The VVPP Coordinator is responsible for notifying Regional Directors by forwarding a copy of the letter scheduling the pre-evaluation on-site review. Should a site not be recommended for VVPP status, or should it be removed or withdraw from the program, the VVPP Coordinator will inform appropriate regional directors in writing.

Employers who meet all Consultation Program requirements for recognition and exemption will have the names of their establishments removed from VOSH's Programmed Inspection Schedule.

NOTE: The Consultation Program Manager will notify Compliance Managers of businesses that qualify for this 12 month deferral of general schedule inspections.

- E. 3. Inspection Materials and Equipment.** The CSHO shall have all report forms in sufficient quantity to conduct the inspection, all assigned personal protective equipment available for use in serviceable condition, and appropriate handouts, if available.
- a. Unassigned PPE.** If, based on the preinspection review or upon facts discovered at the worksite, the need for unassigned personal protective equipment (PPE) is identified, the Compliance Manager shall ensure that any required equipment is provided. Prior to the inspection, the Compliance Manager shall ensure that the CSHO has been trained in the uses and limitations of such equipment.
 - b. Hard Hats, Safety Glasses and Safety Shoes.** The Compliance Manager shall assure that appropriate PPE is provided to and used by CSHOs. This includes training on the proper use and limitations of the equipment. Approved hard hats, approved safety glasses with permanently or rigidly attached side shields, and approved safety shoes shall be worn by CSHOs on the walkaround phase of the onsite visit, unless the visit is being conducted at a worksite where no overhead hazards, eye hazards, and/or foot hazards are likely to be present. This will set an example for industry and provide minimum acceptable protection for the CSHO. The Compliance Manager may consult with the appropriate Health or Safety Program Director as necessary.

- E.3.**
- c. Respirators.** Inspections involving the use of negative pressure respirators shall not be assigned without a determination, using guidelines established by a physician, that the CSHO may use a respirator. Also, the CSHO has to have had an adequate quantitative fit test within the last year. Since respirators with tight-fitting face pieces require the skin to be clean shaven at the points where sealing occurs, CSHOs assigned to conduct inspections which involve the use of such respirators shall not have facial hair which interferes with the face to facepiece seal or function of the respirator valve(s).
 - d. Special or Additional Equipment.** If there is a need for special or additional equipment, the Compliance Manager shall be consulted to ensure that training in the use, and limitation, of such equipment has been accomplished prior to the inspection. The Compliance Manager shall ensure that a review or recheck in the use of all equipment is given to the CSHO at least once a year.
- 4. Safety and Health Rules of the Employer.** The CSHO shall comply with all appropriate safety and health rules and practices at the establishment and wear or use the appropriate safety clothing or protective equipment required by VOSH standards or by the employer for the protection of employees.
- 5. Special Entrance Requirements.** The CSHO shall not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be the Compliance Manager responsibility to procure whatever material and equipment are needed for the safe conduct of the inspection.
- 6. Advance Notice of Inspections.**
- a. Policy.** Section 40.1-51.3:1 of the *Code of Virginia* and § 230 of the *Administrative Regulations Manual* contain a general prohibition against the giving of advance notice of inspections, except as authorized by the Commissioner. **The penalty for giving unauthorized advanced notice ranges between \$100 and \$1,000 and/or imprisonment for not more than six months. (See § 40.1-51.3:1 of the *Code of Virginia*.)**

(1) Explanation. VOSH laws, standards and regulations cover many conditions which are subject to speedy alteration and disguise by employers. To prevent such changes in worksite conditions, *Code of Virginia*, § 40.1-51.3:1 prohibits unauthorized advance notice of inspections and § 40.1-49.8(1) authorizes VOSH to enter worksites “without delay” in order to preserve the element of surprise.

E.6.a.

(2) Narrow Exceptions. There may be many occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice.

(3) Authorization of Advance Notice. Advance notice of inspections may be given only in the following situations:

- (a)** In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
- (b)** When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
- (c)** To ensure the presence of employer and employee representatives or other appropriate personnel who, as determined by the Commissioner, are needed to aid in the inspection; and
- (d)** When the Commissioner determines that giving advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.

(4) What Constitutes Advance Notice. Advance notice exists whenever the Commissioner sets up a specific date or time with the employer for the CSHO to begin an inspection, or to continue an inspection that was interrupted or delayed, before the walk around was completed, for more than five (5) working days. It generally does not include nonspecific indications of potential future inspections.

(a) Delay Approved. Although advance notice normally does not exist after the CSHO has arrived at the worksite, presented credentials and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection. For example, the employer representative on site may request a delay of entry pending the return of the president or some other higher ranking official.

- 1 Such delays shall be as short as possible. If an employer's (or an employee representative's) request for delay appears reasonable, the CSHO may delay or interrupt the inspection for up to an hour. The Compliance Manager shall be contacted if the delay lasts or is anticipated to last longer than one hour.

E.6.a.(4)(a)

2 The Compliance Manager shall decide whether the circumstances justify a delay of more than one hour and, if so, for how long. If the delay appears reasonable, the inspection may be delayed or interrupted for the time judged necessary, but in no case for longer than five (5) working days.

3 The inspection shall be resumed as soon as reasonably possible. Delays or interruptions of less than five (5) working days shall not require implementation of advance notice procedures.

(b) Delay Not Approved. If the employer or the employee representative requests a delay which the Compliance Manager believes is unreasonable or without sufficient justification (e.g., too long, not good faith) or if the delay requested is more than five (5) working days except as indicated above, the CSHO shall inform the requester that agency policy does not allow for such a delay. If the employer representative continues to insist on the delay, the situation shall be treated as a refusal of entry.

(c) Other Circumstances. In unusual circumstances, the Compliance Manager, in consultation with the appropriate program director may decide that a delay of more than five (5) working days is necessary; e.g., compliance personnel may not be available in the Regional or Branch Office because of higher priority demands. Any situation, except a delay after the initial walkaround is completed, involving a delay of more than five (5) working days, whatever the justification, shall be handled as advance notice and must be approved by the appropriate program director.

b. Procedures/Documentation. In the situations described above, advance notice may be given by the CSHO only after authorization by the Commissioner. In cases of apparent imminent danger, however, advance notice may be given by the CSHO without such authorization if the Commissioner is not immediately available. The Commissioner shall be notified as soon as possible and kept informed of all details. The CSHO shall document conditions requiring advance notice and the procedures followed in the case file.

E.6.b.

- (1)** If it is decided that advance notice will be given, the CSHO shall do so by telephone or in person. No advance notice may be given more than 24 hours before the inspection except in unusual circumstances that justify such notice. Documentation of the conditions requiring advance notice and the procedures followed shall be included in the case file.
- (2)** If advance notice is to be given at a construction or other multi-employer worksite, the CSHO shall contact the general contractor. If there are two or more general contractors, all shall be contacted. The general contractor shall be instructed to advise all subcontractors on the site of the inspections.
- (3)** During telephone contact with the employer, the CSHO shall identify himself, explain the purpose of the inspection, state when the inspection is expected to be conducted, find out the employer's normal business hours and whether special protective equipment or precautions are required. If security clearances or immunizations are necessary, the Compliance Manager shall be notified.
- (4)** An important purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in conducting an effective and thorough inspection. A responsible management official shall be requested to assist in the inspection. The CSHO shall advise the employer that § 40.1-51.2(d) of the *Code of Virginia* and § 230 of the *Administrative Regulations Manual* require that an employee representative be given an opportunity to participate in the inspection.
- (5)** The CSHO shall determine if employees at the establishment are represented by a labor organization(s) and if there is a safety committee with employee representatives. The CSHO shall advise the employer, when advance notice is given, to notify the authorized employee representative(s) of the inspection, promptly.
- (6)** If a general contractor is contacted, the CSHO will tell the contractor to instruct each subcontractor to notify employee representatives of the inspection promptly.
- (7)** When requested by an employer who furnishes the identity of the representative, the CSHO shall promptly inform the employee representative of the inspection and shall provide any other information necessary in accordance with § 230 of the *Administrative Regulations Manual*.

- E.6.b.** **(8)** The advance notice requirement for employees applies only if there is a known representative authorized by employees, such as a labor organization or a safety committee with employee representatives. If there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the CSHO shall consult with a reasonable number of employees during the inspection to determine the impact or possible adverse effects of the advance notice.

7. Pre-inspection Compulsory Process.

a. Pre-Inspection Administrative Search Warrant.

- (1)** Sections 40.1-49.8 and 40.1-49.9 of the *Code of Virginia* authorize the agency to seek a warrant in advance of an attempted inspection if circumstances reasonably justify not first seeking consent.
- (2)** Although agency policy is generally to not seek warrants before an employer objects to an inspection or investigation, in certain circumstances the Compliance Manager may, after consultation with the Director of the Office of Legal Support, authorize the Office of Legal Support to seek an inspection warrant in advance of an attempt to inspect or investigate.

NOTE: Examples of such circumstances would be denial of entry in previous inspections, knowledge that a job will only last a short time or that job processes will be changing rapidly.

b. Pre-Inspection Interrogatories.

- (1)** Section 40.1-6 of the *Code of Virginia* authorizes the Commissioner to issue interrogatories and to require records and information necessary for inspections be made available to the CSHO.
- (2)** Interrogatories may also be issued prior to any attempt to contact the employer or other person for evidence related to a VOSH inspection or investigation.

- 8. Expert Assistance.** The appropriate program director shall arrange for a specialist from within VOSH or a qualified outside consultant to assist in an inspection or investigation when the need for such expertise is identified by the Compliance Manager, or the CSHO. (See also Chapter IIB, D.8.b.).

- E.8.**
- a. Implementation.** Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to, noise, air contaminants, complicated machine guarding and construction.
 - b. Performance.** VOSH specialists may accompany the CSHO or they may perform their tasks separately. Outside consultants must be accompanied by a CSHO. VOSH specialists and outside consultants shall be briefed on the purpose of the inspection and the personal protective equipment to be utilized. Outside consultants will work within the specifications of the contract developed by the Office of Legal Support and approved by the Office of the Attorney General when required.
 - c. Reporting.** All data, conclusions and recommendations from the assigned specialists shall be made part of the inspection report, including information on any actions taken by the employer in response to the recommendations.

- 9. Personal Security Clearance.** Some establishments have areas which contain material or processes which are classified by the U. S. Government in the interest of national security. If VOSH has difficulty obtaining entry into a classified area, the CSHO shall thoroughly document the facts including the type of security clearance necessary, the areas that are classified, the controlling employer representative and, if possible, the type of work being performed. The inspection shall be continued in all other areas not classified.

The information concerning the classified areas shall be called in to the Compliance Manager as soon as possible, either during or at the conclusion of the walk around, and the telephoned information shall be recorded in the case diary log of the case file. If the Compliance Manager determines that further action must be taken regarding the classified areas he shall consult with the appropriate Program Director and the Director of VOSH Programs who may, if he deems it necessary, refer that part of the inspection to the OSHA Regional Office for possible federal action. The Regional Director shall be informed of this action.

- 10. Classified and Trade Secret Information.** Any classified or trade secret information and/or personal knowledge of such information by VOSH personnel shall be handled in accordance with the regulations of § 40.1-51.4:1 of the *Code of Virginia* which protects the confidentiality of trade secret information during the course of a VOSH inspection. The collection of such information, and the number of personnel with access to it, shall be limited to the minimum necessary for the conduct of compliance activities. The CSHO shall identify classified and trade

secret information as such in the case file. (See also Chapter IIA, D.7. and IIA, E.2.p.) If trade secrets are identified, the CSHO will explain that VOSH is required by law to preserve the confidentiality of all information which might reveal a trade secret in accordance with § 40.1-51.4:1 of the *Code of Virginia* and § 250 of the *Administrative Regulations Manual*.

- E. 11. Preemption or Jurisdiction by Another Agency.** The determination of preemption is, in many cases, a highly complex matter. To preclude as much as possible any misunderstanding with other agencies and to avoid consequent adverse actions by employers (or agencies) the Compliance Manager shall observe the following guidelines whenever a situation arises involving a possible preemption of jurisdiction question.

- a. Agreements with Other Agencies.** The Compliance Manager shall be alert to potential conflicts with other agencies at all times. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, the Compliance Manager shall immediately determine if the issue has been addressed in a Memorandum of Understanding or other agreement with the agency involved. (Refer to section E.11.g., Interagency Agreements).
- b. Clarifying Jurisdiction.** If not, the Compliance Manager shall consult with the appropriate program director.

NOTE: Program Directors and Regional Directors shall maintain a dialog with their counterparts in other agencies to ensure full cooperation in the event a situation requires clarification.

- c. Consultation with Central Office.** If the Regional Office is unable to clarify the issue, it shall be referred to the Office of Legal Support in the Central Office.
- d. Jurisdictional Question Arises During Inspection.** At times an inspection may have already begun when the jurisdictional question arises. In such cases, the CSHO shall interrupt the inspection and contact the Compliance Manager for guidance.
- e. Citation and Penalty Cleared with Office of Legal Support.** If, following an inspection, there remains any doubt as to VOSH coverage, the proposed citation and penalty shall be cleared with the Program Director in consultation with the Office of Legal Support.

- E.11.**
- f. VOSH Referral to Appropriate Agency.** If it is determined that VOSH does not have jurisdiction, the case shall be referred to the appropriate agency, if any, where VOSH has reason to believe that violations of such agency's laws and regulations may exist.
 - g. Current Interagency Agreements.** Summaries of current interagency agreements are located in applicable VOSH Program Directive 13-004, or its most current version.
 - h. Inspection on Federal Lands.** The issue of when VOSH has jurisdiction for inspection purposes over private employers and civilian contractors working on federally owned land within the Commonwealth of Virginia is complex, and raises difficult legal jurisdictional issues.

- (1) Determining Jurisdiction.** The courts have generally concluded that if the State of Virginia has ceded exclusive jurisdiction to the United States over a parcel of land, then there is no VOSH jurisdiction on that land. If the State has only granted the U.S. partial or concurrent jurisdiction, then there may be VOSH jurisdiction.

Because it will often be unclear before starting an inspection whether the State has ceded exclusive jurisdiction or has concurrent jurisdiction, it is recommended that the Compliance Manager contact the Program Director who shall contact OLS for advice regarding the status of the federal lands in question.

- (2) Inspection Procedures.** Once a determination is made that VOSH has jurisdiction, policies and procedures for inspection of private employers and civilian contractors working on federally owned land are the same as those followed in the private sector. When an inspection is scheduled for a federal facility, the CSHO shall first contact the government person in charge to inform her or him of VOSH's presence at the facility, to request permission to inspect a contractor, and to invite appropriate participation.